

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Stephen J. Brown
Serial No.: 10/826,107
Title: REMOTE HEALTH MONITORING AND MAINTENANCE SYSTEM
Filed: April 16, 2004
Attorney Docket No.: 7553.00097 / 04-0410
Examiner: Rangrej, S.
Art Unit: 3686

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal by an attorney either of record or acting under 37 CFR 1.34.

REMARKS

Review is requested for the following reasons:

1. The Examiner has omitted one or more elements needed to make a *prima facie* rejection.

The final Office Action mailed December 8, 2009 responds to amendments made in the last amendment by Applicant (filed on August 20, 2009). The Examiner withdrew a rejection based on Beckers and now rejects the claims on a combination of DeMarzo and Beckers. Specifically, the previous amendment added "said video display configured to display graphic and multi-line alphanumeric information." In response to this amendment, the Examiner issued a new ground of rejection which, with respect to the amended limitation, merely cited column 5, lines 42-57 of DeMarzo. The Examiner presented no analysis at all explaining either the particular feature(s) in DeMarzo generally, or the particular feature(s) in the cited passage specifically, that are considered to correspond to the video display configured to display graphic and multi-line alphanumeric information, as presently claimed. Applicant's representative detailed this deficiency in the Response After Final filed February 1, 2010 (see page 23, line 11 - page 24, line 12). Applicant's representative also detailed reasons why the combination of DeMarzo and Beckers did not appear to be reasonable (see page 24, line 13 - page 25, line 24 in the Response After Final filed February 1, 2010). The Examiner presented no arguments rebutting this analysis.

In particular, the Advisory Action (mailed March 11, 2010) is insufficient. The Examiner merely states that "the arguments therein have been deemed not persuasive." The Office Action and the

Advisory Action fail to provide a clear and concise analysis and/or explanation of why the DeMarzo reference is considered to cure the deficiencies of Beckers with respect to the limitation of said video display configured to display graphic and multi-line alphanumeric information. Specifically, the Office Action merely provides a bare citation to column 5, lines 42-57 of DeMarzo, which at best may be characterized as a finding of fact. However, without some analysis or explanation of how the Examiner (i) interprets the specific claim language and (ii) interprets what is actually presented in the cited section of DeMarzo, Applicant is denied information that is necessary in judging the propriety of continuing the prosecution, which is contrary to 37 C.F.R. 1.104(a)(2). In particular, neither the Office Action nor the Advisory Action provide a clear explanation of how and why DeMarzo would be viewed by a person of ordinary skill in the field of the invention as necessarily disclosing a video display configured to display graphic and multi-line alphanumeric information, as presently claimed.

Furthermore, the mere statement that the arguments therein have been deemed not persuasive does not provide any explanation or insight into WHY the extensive arguments presented on pages 20-25 of the Response After Final are not considered persuasive by the Examiner. It is unclear from the Examiner's statement whether the arguments were actually read, considered and a thoughtful conclusion formed, or the Examiner just looked at the response as not being sufficient for the Examiner to even consider changing the previously taken position. The lack of any explanation with respect to what in the particular arguments presented the Examiner considered unpersuasive or rebuttal

as to any of the arguments made by Applicant's representative does not to put Applicant in the position of being able to determine whether to appeal or amend in order to continue the prosecution. As such, the Examiner has not helped to clearly define the issues so that Applicant could make a well reasoned appeal.

Applicants' representative believes that the Examiner has not met the Office's initial burden to factually establish a *prima facie* basis for making an obviousness rejection, where the Examiner has not put forth an interpretation of the specific claim language and an explanation of how the cited references are interpreted to meet the claim language as construed by the Examiner. The Examiner would have prosecution closed based on the rejection "DeMarzo: col. 5, 42-57" despite unchallenged remarks by Applicant's representative to the contrary. The Examiner is improperly requiring that Applicant's representative prove a void, i.e., that the DeMarzo reference is missing the claimed limitations. In contrast, the Examiner has not met her own burden to make the initial *prima facie* case that the DeMarzo reference actually teaches or suggests the claimed limitations. No clear explanation of the interpretation of the specific claim language has been provided by the Examiner. No clear explanation of the interpretation of the cited passage of DeMarzo has been provided by the Examiner. No clear explanation of why the skilled artisan would necessarily view DeMarzo as meeting the claimed limitation is provided by the Examiner. Therefore, prosecution should be reopened.

If the Pre-Appeal Board members find some way to interpret the claims and/or references in a way different than characterized

above, Applicant's representative requests that the Board reopen prosecution. Applicant's representative also requests that the Examiner initiate a telephone interview (586-498-0670) in an effort to consider whether a modification to the claims is possible in order to be interpreted as discussed.

Applicant's representative believes that clear errors in the Examiner's rejection(s) exist or the Examiner has omitted one or more essential elements needed for a *prima facie* rejection. For example, (i) a limitation is not met by a reference or (ii) the Examiner failed to show proper motivation for making a modification in an obviousness rejection under 35 U.S.C. §103.

The Examiner is respectfully invited to call the Applicant's representative should it be deemed beneficial to further advance prosecution of the application.

If any additional fees are due, please charge Deposit Account No. 50-0541.

Respectfully submitted,
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Dated: April 2, 2010

c/o Sandeep Jaggi
Health Hero Network

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